upon topics relevant or irrelevant according to the wisdom or unwisdom of the writer. Is this an imaginary picture? Let the facts stated in the beginning of this report answer.

We can imagine a primitive society in which a king and his judges were the only magistrates. They had made no laws. The judges decided each controversy as it arose, and by degrees what had been once decided came to be followed, and so there grew up a system of precedents, by the aid of which succeeding cases were decided. Hence came judge-made law. But could any sane man suppose that this was a scheme of government to be kept up when legislatures came in?.

The difference between judge-made law and jurisprudence founded upon statutes is as wide as the poles. The true function of the Legislature is to make the law; the true function of the judge is to expound it. But because language is at best an imperfect expression of intention, and sometimes susceptible of more than one interpretation, and the courts are now and then obliged to choose between different interpretations, it does not follow that the function of interpretation is to be enlarged into the function of legislation. The separation of the two is in theory assumed, and in constitutions declared, however the theory may be contradicted and the Constitution ignored in practice.

Jurisprudence is not the making of law, but the application of it; this application belongs to the courts. The Constitution of the United States was not made by the judges; they expound it, and generally in the exposition other courts will follow the Supreme Court; but the Supreme Court has not always followed itself, that is to say, it does not always adhere to its own precedents; the executive and legislative departments do not feel bound to follow it; nobody, in any department or court, would now follow the *Dred Scott* case, and there are many who would not follow the late legal tender exposition of the Constitution.

Jurisprudence is not retroactive. The statute is there; everybody may read it for himself; if he thinks it means something different from what the courts think, he takes the risk of that; such a risk is inseparable from the use of language. In construing the meaning of a statute the courts in no sense make the law; they only interpret.

Law libraries hold two classes of books, one large and one small; the latter contains the statutes. In the oldest of the States the statute books may number over a hundred. In New York there are one hundred and twenty-five. How many other law books are there? From ten to fifty thousand. The law not contained in the statute was made by the judges. For this reason it is called judge-made law; sometimes it is also called case-law, and sometimes the law of precedents. The last is the best name for it.

It may be asked: Can judge-made law be eliminated from our legal system altogether, as if the answer could affect the question of codification? It could not indeed affect it, because partial elimination may be better than none at all. But it is quite possible to eliminate judge-made law from our system; that is to say, every general rule of the law can be reduced to a statutory form; not all at once perhaps, but by degrees; that is, a great part now and the rest hereafter. Under such a code precedent ceases to be law, and becomes a guide. Exposition is not in any just sense judge-made law; in fact it is not law at all. If in the process of exposition the inferior court follows the superior, it yields to authority; if one co-ordinate court follows another it defers to another's judgment in cases where opinions may differ; if, however, the previous judgment is clearly in conflict with the enactment, the former must give way, for the reason that the enactment is the paramount authority.

Two questions are sometimes asked in respect of a code:

1. How will the judges decide if they find no provision of the Code to guide them? and

2. How will they decide if they find no provision of the Code, and no precedent?

The answer to each is easy:

1. If they find no statutory provision and a precedent, they will decide according to the precedent.

2. If they find no statute and no precedent they will decide, as they would now decide in the same circumstances, that is, upon the